

99-026

MENTAL HEALTH GENERALLY: ADMISSIONS AND DISPOSITIONS IN GENERAL.

COURTS NOT OF RECORD: JUVENILE AND DOMESTIC RELATIONS COURTS – PSYCHIATRIC INPATIENT TREATMENT OF MINORS ACT – INTAKE, PETITION AND NOTICE.

Act controls involuntary commitment of minors in need of psychiatric treatment. Magistrate may issue temporary detention order for juvenile believed to be in need of treatment for mental illness without petition being filed in juvenile court and without intervention of juvenile intake officer; may not issue emergency custody order if person believed to be in need of such treatment is minor.

The Honorable D. Gregory Baker
Judge, Juvenile and Domestic Relations Court for Lee and Scott Counties
August 16, 1999

You ask whether, in instances in which a juvenile is believed to be in need of treatment for mental illness, a magistrate should issue a temporary detention order ("TDO") under § 37.1-67.1 of the *Code of Virginia* without a juvenile court service unit intake officer first filing the petition generally filed in the juvenile and domestic relations district court (the "juvenile court").¹

Section 16.1-260(A) provides that "[a]ll matters alleged to be within the jurisdiction of the [juvenile] court shall be commenced by the filing of a petition" and that "the processing of petitions shall be the responsibility of the [juvenile] intake officer."² The involuntary commitment process for juveniles believed to be mentally ill and in need of hospitalization is within the jurisdiction of the juvenile court pursuant to The Psychiatric Inpatient Treatment of Minors Act, §§ 16.1-335 through 16.1-348.³

Section 16.1-337 provides that "[a] minor may be admitted to a mental health facility for inpatient treatment only ... in accordance with an order of involuntary commitment entered pursuant to §§ 16.1-341 through 16.1-345." Section 16.1-341(A) provides that a petition for involuntary commitment of a minor may be filed with the juvenile court by a parent or "any responsible adult." The court is to hold a hearing on the petition within seventy-two hours of the filing of the petition.⁴ Prior to the hearing, the court is to direct the local community services board to arrange for an evaluation of the minor.⁵ Sections 16.1-343 through 16.1-345 set out the procedures for the commitment hearing and the criteria for the juvenile court to consider in issuing orders of involuntary commitment.

In addition to the hearing and disposition provisions, § 16.1-340 provides for the emergency admission of minors for inpatient treatment:

A minor may be taken into custody and admitted for inpatient treatment pursuant to the procedures specified in § 37.1-67.1. If the minor is admitted to a willing facility in accordance with § 37.1-67.1, the temporary detention order shall

be effective until such time as the juvenile and domestic relations district court schedules a hearing. The juvenile and domestic relations district court shall schedule a hearing pursuant to § 16.1-341 no sooner than twenty-four hours and no later than seventy-two hours from the time of the issuance of the temporary detention order.^[6]

Sections 37.1-67.01 through 37.1-90 control the involuntary commitment process in Virginia for adults who are mentally ill and in need of hospitalization. Section 37.1-67.1 authorizes any magistrate, "upon the sworn petition of any responsible person or upon his own motion," to issue a TDO if it appears "that the person is mentally ill and in need of hospitalization" and "is incapable of volunteering or unwilling to volunteer for treatment."⁷ Subject to several exceptions, the order may be issued only after an in-person evaluation by an employee of the community services board or its designee.⁸ A TDO has a detention period of forty-eight hours,⁹ after which a commitment hearing must be held or the person must be released.¹⁰ If it is determined at the commitment hearing that the commitment criteria are met, an order of involuntary commitment is issued.¹¹

The primary goal of statutory construction is to ascertain and give effect to the intent of the legislature.¹² Any construction that would impair the purpose of a statute or that would defeat its object is to be avoided.¹³ The obvious purpose of §§ 16.1-340 and 37.1-67.1 is to establish an emergency detention procedure for persons believed to need immediate hospitalization. The statutes permit any magistrate to issue the order after an in-person evaluation by an employee of a community services board. The order may be issued upon the petition of "any responsible person" or upon the magistrate's own motion.¹⁴ Moreover, § 37.1-67.1 requires the chief judge of each general district court to establish and require that a magistrate, as provided by the section, be available twenty-four hours a day, seven days a week, to issue such TDOs. Section 37.1-67.1 also requires every local community services board to provide each general district court and each magistrate "a list of its employees and designees who are available to perform the evaluations."

It would be inconsistent with the purpose of § 37.1-67.1 and the procedure established by the General Assembly under the statute to require that a juvenile intake officer file a petition in the juvenile court before a magistrate may issue a TDO. Imposing additional requirements that could delay the issuance of the order would defeat the object of the statute. Accordingly, it is my opinion that a magistrate may issue a TDO under § 37.1-67.1 in the case of a juvenile without a petition being filed in the juvenile court and without the intervention of a juvenile intake officer.¹⁵ This conclusion also is consistent with § 16.1-246(H), which permits a child to be taken into immediate custody when the child "is believed to be in need of inpatient treatment for mental illness as provided in § 16.1-340."

In addition to the issuance of TDOs under § 37.1-67.1, the involuntary commitment statutes for adults authorize magistrates to issue emergency custody orders ("ECOs") under § 37.1-67.01. Unlike a TDO, an ECO may be issued without a prior evaluation of the individual. An ECO requires that the person be taken into custody and transported to a "convenient location" for evaluation by a community services board designee to assess the need for hospitalization.¹⁶ The custody period under § 37.1-67.01 may not exceed four hours.

While § 16.1-340 permits a minor to be taken into custody in an emergency situation in accordance with the procedures specified in § 37.1-67.1, § 16.1-340 contains no reference to § 37.1-67.01. An established principle of statutory construction is that when the General Assembly includes one item in a statute, it intends to exclude omitted items from the scope of the statute.¹⁷ Moreover, in enacting the comprehensive scheme set out in The Psychiatric Inpatient Treatment of Minors Act, the General Assembly has evidenced an intent that the Act control the involuntary commitment of minors in need of psychiatric treatment. It is accordingly my view that a magistrate lacks the authority to issue an ECO under § 37.1-67.01 if the person believed to be mentally ill and in need of hospitalization is a minor.

¹Although you inquire specifically about a magistrate's issuance of a TDO following the issuance of an emergency custody order under § 37.1-67.01, it is my opinion, as discussed below, that a magistrate may not issue an emergency custody order under § 37.1-67.01 in the case of a juvenile. Accordingly, I have confined my response to the issuance of a TDO under § 37.1-67.1.

²Other provisions in § 16.1-260 detail the procedure an intake officer is to follow upon receipt of a petition. See, e.g., § 16.1-260(C), (D). Section 16.1-262 sets out the form and content of the petition. Form DC511, which you reference in your request, is the form Juvenile Petition.

³The Psychiatric Inpatient Treatment of Minors Act establishes procedures authorizing the parental admission of minors younger than 14 and nonobjecting minors 14 and over (§ 16.1-338); parental admission of an objecting minor at least age 14 (§ 16.1-339); and the involuntary commitment of a minor when both the parent and minor object to the admission (§ 16.1-345).

⁴Section 16.1-341(B). If the period ends on a Saturday, Sunday or legal holiday, the period may be extended to a maximum of ninety-six hours. *Id.*

⁵Section 16.1-342.

⁶The period may be extended to a maximum of ninety-six hours to accommodate Saturdays, Sundays and legal holidays. Section 16.1-140.

⁷The magistrate is to issue the TDO if the evidence indicates "that the person presents an imminent danger to self or others as a result of mental illness, or is so seriously mentally ill as to be substantially unable to care for self." Section 37.1-67.1.

⁸Section 37.1-67.1.

⁹*Id.* The person may be detained for a maximum of ninety-six hours if the detention period ends on a Saturday, Sunday or legal holiday. Section 37.1-67.3.

¹⁰Section 37.1-67.3.

¹¹*Id.*

¹²See *Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

¹³ See *Cartwright v. Commonwealth*, 223 Va. 368, 372, 288 S.E.2d 491, 493 (1982); 1998 Op. Va. Att'y Gen. 115, 116.

¹⁴ Section 37.1-67.1.

¹⁵ A prior opinion of the Attorney General considers the statutory authority of a magistrate rather than a juvenile intake officer to certify a juvenile's refusal to submit to a chemical test for alcohol or drug content. See 1987-1988 Op. Va. Att'y Gen. 271. The opinion concludes that the statute clearly authorizes only the magistrate to issue the certificate of refusal. *Id.* at 273. Once the magistrate issues the certificate and warrant, jurisdiction is then transferred to the juvenile court, at which time the petition requirement is triggered and the juvenile intake officer becomes involved. *Id.* at 273-74. The procedure established under The Psychiatric Inpatient Treatment of Minors Act for the involuntary commitment of minors appears to operate in the same manner.

¹⁶ Section 37.1-67.01.

¹⁷ See *Turner v. Wexler*, 244 Va. 124, 127, 418 S.E.2d 886, 887 (1992); 1998 Op. Va. Att'y Gen. 33, 34.